

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MATTHEW MCDERMOTT,

Plaintiff,

- against -

COX MEDIA GROUP, LLC, COX RADIO, INC. and
COX COMMUNICATIONS, INC.

Defendants.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Matthew McDermott (“McDermott” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendants Cox Media Group, LLC (“Cox Media”), Cox Radio, Inc. (“Cox Radio”), Cox Communications, Inc. (“Cox Communications” and together with Cox Media and Cox Radio “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendants unauthorized reproduction and public display of a copyrighted photograph of a bird that looks and acts like Donald Trump named “Donald the Pheasant”, owned and registered by McDermott, a New York City based photojournalist, on approximately eight-five websites owned and operated by Defendants. Accordingly, McDermott seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendants because Defendants resides in and/or are doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

1. McDermott is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 28-07 Newtown Avenue, Astoria, New York 11102. McDermott photographs have had a profound effect helping to stimulate the global heart of giving, leading to the contribution of millions of dollars to charities and worldwide humanitarian efforts. Matthew's work from Haiti's earthquake devastated streets inspired a generous outpouring of support especially by his "Kiki" photo, the young boy rescued unharmed with arms out stretched in joy after being trapped under rubble for eight days. Some of Matthew's international projects include the documentation of Darfur's genocide survivors and the humanitarian relief efforts brought to that region, wide spread famine in Niger, detainees at Cuba's Guantanamo Bay, the massive earthquake devastation in Pakistan and most recently in Haiti, to struggles in Beirut, Belfast, Kosovo, and others. Nationally, Matthew captured the horrific events of the 9/11/2001 World Trade Center attacks, human sufferings in New Orleans after Hurricane Katrina, and the local effects upon the Gulf's fishing community following the massive BP oil spill.

2. Upon information and belief, Cox Media is a limited liability company duly organized and existing under the laws of the State of Delaware with a place of business at 555

Sunrise Highway, Babylon, New York, 11704. Upon information and belief, Cox Radio is a corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 555 Sunrise Highway, Babylon, New York, 11704. At all times material hereto, Cox Media and Cox Radio has owned and operated websites at the URL's: www.journal-news.com, www.hot105fm.com, www.b985.com, www.thenew93q.com, www.wgauradio.com, www.daytondailynews.com, www.krmg.com, www.springfieldnewssun.com, www.mymagic949.com, www.wsbradio.com, www.wokv.com, www.1037chuckfm.com, www.Y100fm.com, www.houstonseagle.com, www.countrylegends971.com, www.myhot995.com, www.k923orlando.com, www.97xonline.com, www.wbli.com, www.wduv.com, www.easy1065.com, www.kiss104fm.com, www.kissrocks.com, www.magic1021.com, www.wbab.com, www.magic1053.com, www.hits97.3.com, www.kono1011.com, www.wgocarolinas.com, www.kkyx.com, www.yourgeorgiacountry.com, www.969theeagle.com, www.wedr.com, www.1037chuckfm.com, www.1033theeagle.com, www.icflorida.com, www.X1071atlanta.com, www.wape.com, www.X1029.com, www.accessatlanta.com, www.dayton.com, www.myajc.com, www.ajc.com, www.news965.com, www.mystatesman.com, www.austin360.com, www.mydaytondailynews.com, http://www.kiro7.com, www.PalmBeachPost.com, www.wsoc.tv and numerous others (the "Websites").

3. Upon information and belief, Cox Communications is a corporation duly organized and existing under the laws of the State of Delaware with a place of business at 555 Sunrise Highway, Babylon, New York, 11704. At all times material hereto, Cox Communications has owned and operated the website www.myconnection.cox.com ("Cox Communications Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

4. On or about May 31, 2016, a resident from Queens, New York called Animal Care and Control to report a golden pheasant, native to China, was found in their backyard. The bird had a visual resemblance to Presidential Republican nominee Donald Trump. The golden two legged birdie was taken to the Wild Bird Fund hospital safe and sound and is going to be released to an area in Upstate New York. The story was not only heavy covered by the press in New York but it was also covered nationally around the United States.

5. On or about May 31, 2016, McDermott photographed "Donald the Pheasant" (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

6. McDermott then licensed the Photograph to The New York Post. On May 31, 2016, The New York Post ran an article that featured the Photograph on its web edition entitled, *This Bird looks and Acts a lot like Donald Trump*. See (<http://nypost.com/2016/05/31/this-bird-looks-and-acts-a-lot-like-donald-trump/>). McDermott's name was featured in a gutter credit identifying him as the photographer of the Photograph. A true and correct copy of the Photograph on the article is attached hereto as Exhibit B.

7. McDermott is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

8. The Photograph was registered with Copyright Office and was given Copyright Registration Number VA 2-009-633.

B. Defendants Infringing Activities

9. Upon information and belief, on or about May 31, 2016, Cox Media and Cox Radio ran articles on the Websites entitled *Bird Looks Like Donald Trump, But Does He Act Like Him?* See

http://www.ajc.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.journal-news.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.kiro7.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313892491
http://www.palmbeachpost.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wsocv.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313892801
http://www.statesman.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wsbradio.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.news965.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.houstonseagle.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wftv.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313892487
http://www.wokv.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.springfieldnewssun.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.austin360.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wsbtv.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313892772
http://www.krmg.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://rare.us/story/donald-trumps-doppelganger-is-ruffling-feathers-in-new-york/
http://www.fox25boston.com/news/bird-looks-like-donald-trump-but-does-he-act-like-him/313892502
http://www.fox23.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313892506

http://www.actionnewsjax.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313892775
http://www.fox13memphis.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313872906
http://www.wpxi.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313892766
http://myconnection.cox.com/article/trending/aHR0cHM6Ly9pZGVudGlmaWVycy5jbWdkaWdpdGFsLmNvbS9tZWRSZXkvcHJvZC9uZXdzLm1lZGxleXN0b3J5LzMzNjEwODAv/
http://faves.rare.us/story/donald-trumps-doppelganger-is-ruffling-feathers-in-new-york/
http://www.palmbeachpost.com/photo/news/national/donald-trump-and-pheasant/pDDJTN/
http://www.fox30jax.com/news/trending-now/bird-looks-like-donald-trump-but-does-he-act-like-him/313892494
http://www.whio.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.mydaytondailynews.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.daytondailynews.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.97xonline.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.mypalmbeachpost.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.myajc.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wedr.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.countrylegends971.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.kiss104fm.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.icflorida.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.thenew93q.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.k923orlando.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.mix96tulsa.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.kono1011.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.b985.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/

http://www.hot105fm.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wgauradio.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.mymagic949.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.1037chuckfm.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/?nmredir=true
http://www.y100fm.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.myhot995.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wbli.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.easy1065.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.kissrocks.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.magic1021.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wbab.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.magic1053.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.hits973.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.gocarolinas.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.kkyx.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.yourgeorgiacountry.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.969theeagle.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.1033theeagle.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.x1071atlanta.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wape.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.x1029.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.accessatlanta.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/

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http://www.myaic.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.mystatesman.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.myhot995.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.power1061.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.easy93.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.star945.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.1073soloexitos.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wmmo.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.power953.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.wduv.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.theboneonline.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.hot1015tampabay.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.1073theeagle.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.971theriver.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.powerathens.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.960theref.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.mix96tulsa.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.k95tulsa.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.k99online.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/
http://www.eagledayton.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/

<http://www.eaglesanantonio.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/>

Tampabaychristianmusic.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/

Todayspulse.com/news/news/national/bird-looks-donald-trump-does-he-act-him/nrXhW/

10. The articles prominently featured the Photograph. A true and correct copy of the articles are attached hereto as Exhibit C and D.

11. Cox Media and Cox Radio did not license the Photograph from Plaintiff for its articles, nor did Cox Media or Cox Radio have Plaintiff's permission or consent to publish the Photograph on its Websites.

12. Upon information and belief, Cox Media and Cox Radio removed McDermott's gutter credit.

13. Upon information and belief, on or about May 31, 2016 Cox Communications, Inc. ran an article on the Cox Communications Website entitled *Bird Looks Like Donald Trump, but does he act like him?* See

<http://myconnection.cox.com/article/trending/aHR0cHM6Ly9pZGVudGlmaWVycy5jbWdkaWdpdGFsLmNvbS9tZWRSZXkvcHJvZC9uZXdzLm1lZGxleXN0b3J5LzMzNjEwODAv/>.

14. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit E.

15. Cox Communications did not license the Photograph from Plaintiff for its article, nor did Cox Communications have Plaintiff's permission or consent to publish the Photograph on Cox Communications Website.

16. Upon information and belief, Cox Communications removed McDermott's gutter credit and did not attribute the Photograph to anyone.

FIRST CLAIM FOR RELIEF

**(COPYRIGHT INFRINGEMENT AGAINST COX MEDIA, COX RADIO AND
COX COMMUNICATIONS, INC.)**
(17 U.S.C. §§ 106, 501)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Defendants infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Websites. Defendants are not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

19. The acts of Defendants complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

20. Upon information and belief, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

21. As a direct and proximate cause of the infringement by Defendants of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

22. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendants willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

23. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

24. Defendants conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST COX
MEDIA, COX RADIO, AND COX COMMUNICATIONS, INC.)
U.S.C. § 1202)

25. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-24 above.

26. When the Photograph was published in an article in The New York Post, the article contained copyright management information protected under 17 U.S.C. § 1202(b).

27. Upon information and belief, in its article on the Websites, Defendants intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

28. The conduct of Defendants violates 17 U.S.C. § 1202(b).

29. Upon information and belief, Defendants falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

30. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Defendants intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph. Defendants also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

31. As a result of the wrongful conduct of Defendants as alleged herein, Plaintiff is entitled to recover from Defendants the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Defendant because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

32. Alternatively, Plaintiff may elect to recover from Defendant statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendants be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendants be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
a) Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management

information and/or removal or alteration of copyright management information committed by Defendants pursuant to 17 U.S.C. § 1203(c);

5. That Defendants be required to account for all profits, income, receipts, or other benefits derived by Defendants as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 23, 2016

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